

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

**REPLY OF SONIC TELECOM, LLC TO COMMENTS ADDRESSING APRIL 15, 2019
PUBLIC NOTICE SEEKING ADDITIONAL COMMENT**

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May 28, 2019

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I. INTRODUCTION AND SUMMARY

USTelecom’s Petition for Forbearance¹ still falls short of demonstrating that forbearance from unbundling requirements is warranted. As Sonic previously explained, the BDS data are silent on the availability of competitive dark fiber interoffice transport.² Likewise, neither the BDS data nor the Form 477 data support forbearance from DS0 loops—especially the xDSL-capable loops that CLECs like Sonic purchase to make high-speed broadband available to residential and business customers.

Instead, access to UNE dark fiber and DS0 loops remains invaluable as a bridge to deploy fiber, as Sonic’s own business model demonstrates. Sonic uses UNE loops (primarily DS0s, and in some cases, DS1s) and dark fiber interoffice transport to establish a sufficient customer base in an area to develop a business case for deploying its own last-mile fiber-to-the premises

¹ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

² Comments of Sonic Telecom, LLC in Response to April 15, 2019 Public Notice Seeking Additional Comment at 4, WC Docket No. 18-141 (filed May 9, 2019) (“Sonic Comments”).

network. While Sonic initially relies on UNE loops to reach its customers, Sonic aims to serve its customers using its own fiber—a goal Sonic is working towards at an increasing pace, though it will still take many years to complete a full migration. CLECs like Sonic have strong incentives to deploy their own fiber networks, both to avoid being cut off from UNE loops once an ILEC migrates to fiber and retires its copper network, and because it can provide better service and earn higher margins on its own fiber. Sonic now serves over a third of its customers over its own fiber and has accelerated its fiber deployment over the past few years; this fiber deployment would not have been possible without the access to UNE loops to establish a customer base.

These UNEs enable competition and connectivity options for consumers and incentivize the continued deployment of fiber infrastructure by incumbents and competitors alike. Striking these UNEs would harm residential as well as business customers—notwithstanding USTelecom’s erroneous claims that CLECs do not use UNEs to serve residential customers.³ Because USTelecom has not met its burden to support forbearance from the unbundling requirements, and because forbearance would harm the public interest, the Commission must deny the Petition.

³ Petition at 27-28 (“In the residential marketplace, competition will not be materially affected by forbearance from Section 251(c)(3) because there is effectively no remaining UNE-based competition in that marketplace. To the extent CLECs serve residential customers using ILEC facilities, they do so on commercial platforms.”).

II. THE RECORD DOES NOT SUPPORT FORBEARANCE FROM DARK FIBER INTEROFFICE TRANSPORT UNES.

The comments responding to the Public Notice⁴ do not point to any specific data in the record to support forbearance from dark fiber transport unbundling. As an initial matter, USTelecom's Petition is silent on forbearance from the dark fiber unbundling requirements, so the Commission should not even consider requests for forbearance from dark fiber UNES. Too late, AT&T and Verizon suggest forbearance from dark fiber unbundling is appropriate based on the assumption that dark fiber is available anywhere there is TDM transport or competitive lit fiber.⁵ This is not the case. Given the lack of support for forbearance from the unbundling obligations for interoffice dark fiber⁶—and USTelecom's failure to raise the issue in its Petition—the Commission should deny the request.

AT&T and Verizon assert that the BDS data support forbearance from transport unbundling, including lit services and dark fiber, but they fail to back up their claims about dark fiber.⁷ AT&T and Verizon simply lump dark fiber together with lit transport based on the unsupported assertion that dark fiber is available anywhere there are lit services. Verizon suggests that “[w]here competitive fiber has been deployed, that fiber can be used to support

⁴ *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, Public Notice, DA 19-281, WC Docket Nos. 18-141 et al. (rel. April 15, 2019) (“*Public Notice*”).

⁵ See Comments of AT&T at 5-6, WC Docket No. 18-141 (filed May 9, 2019) (“AT&T Comments”); Comments of Verizon at 15, WC Docket No. 18-141 (filed May 9, 2019) (“Verizon Comments”).

⁶ Sonic Comments at 4.

⁷ See AT&T Comments at 5-6; Verizon Comments at 15.

either lit or dark services,”⁸ but this is not how the market works in real life. As Sonic has explained, in Sonic’s experience competitive providers rarely, if ever, offer interoffice dark fiber transport.⁹

Verizon also suggests that “there are ample alternative services and arrangements to dark fiber UNEs” where it sells dark fiber UNEs, but it does not provide any support for this claim.¹⁰ Contrary to Verizon’s suggestion, Sonic has not identified feasible replacements for the dark fiber interoffice transport UNEs to connect to the Tier 3 wire centers where Sonic is collocated. Sonic analyzed the availability of competitive dark fiber transport providers in Sonic’s service territory and found that the average distance between a Sonic Tier 3 wire center and the closest competitive provider’s facilities was over 5 miles.¹¹ Sonic would incur substantial cost to connect to facilities at such a distance. Further, many of these facilities “lack the route redundancy required to reliably provide life-critical telecommunications services.”¹² In any event, transport is not simply interchangeable. As Sonic has previously explained, any alternatives (if available, which in many cases they are not) for Sonic to establish a connection between the wire centers where it currently uses dark fiber UNEs would cost magnitudes more

⁸ Verizon Comments at 15. Verizon cites to an order in the BDS proceeding that refers to the *existence* of companies that provide access to dark fiber. *See Business Data Services in an Internet Protocol Environment et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54, 31 FCC Rcd 4723, ¶ 67 (2016). This order does not suggest, however, that dark fiber is available anywhere competitive fiber has been deployed.

⁹ Sonic Comments at 5; *see also* Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom, WC Docket No. 18-141, Attach. A ¶ 16 (filed Aug. 6, 2018) (“Sonic Opposition”).

¹⁰ Verizon Comments at 16.

¹¹ *See* Declaration of Dane Jasper, ¶ 4, Attach. A to Reply Comments of Sonic, WC Docket No. 18-141 (filed on May 28, 2019) (“Attachment A”).

¹² *Id.*

than its existing dark fiber UNEs, would be limited to the speeds offered by the providers, and would be significantly less flexible than dark fiber UNEs.¹³ Moreover, Sonic has already invested significant amounts to purchase the equipment to deploy its existing network over the dark fiber UNEs.¹⁴ Purchasing alternative transport solutions would mean Sonic would also have to purchase additional or new routers and network equipment, which would greatly increase the cost of providing service.¹⁵ These alternatives would prevent Sonic from providing the high level of voice and broadband services at affordable prices that its customers value.

The BDS data do not provide any information about the competitive availability of *dark fiber* interoffice transport, and, accordingly, do not support forbearance from the unbundling requirements. Even if Sonic could make use of alternative transport to replace dark fiber UNEs, which it cannot,¹⁶ the BDS data do not show that sufficient competition exists to replace dark fiber UNEs, which are only available to or from Tier 3 wire centers. As INCOMPAS notes, “[t]here is no evidence in the record, including in the BDS data, that competition or even potential competition for transport exists for Tier 3 wire centers.”¹⁷ USTelecom appears to concede this fact, as it has recently changed its forbearance request to focus on transport services offered on routes between wire centers that are either Tier 1 or Tier 2 only, omitting from its

¹³ Sonic Opposition at 10; *id.* at Attach. A ¶ 16 (purchase of commercial wholesale Ethernet transport equivalent to the capacity Sonic achieves using its own electronics on unbundled dark fiber would cost \$70,000 per connection, compared to \$100 per month for two dark fiber interoffice transport UNEs).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Sonic Comments at 5; Sonic Opposition at 10; *id.* at Attach. A ¶ 16.

¹⁷ Comments of INCOMPAS at 20, WC Docket No. 18-141 *et al.* (filed on May 9, 2019).

request those interoffice routes where either end is a Tier 3 wire center.¹⁸ Commenters supporting forbearance have not provided any support for their suggestions that forbearance from dark fiber interoffice transport unbundling requirements is appropriate; in any event, these suggestions do not align with USTelecom’s latest request. Because USTelecom’s Petition remains deficient with respect to dark fiber—and because forbearance would harm competition and the public interest—the Commission should deny the request.

III. DS0 UNE LOOPS REMAIN NECESSARY TO ENSURE CONTINUED RESIDENTIAL COMPETITION AND VALUE.

The record likewise does not support forbearance for DS0 UNEs. Citing newly released Form 477 data, USTelecom, AT&T, and Verizon push for forbearance from unbundling requirements for DS0 loops and propose a partial forbearance regime using a digital and analog distinction that confuses the different loop types and glosses over the xDSL-capable DS0 loops that CLECs like Sonic purchase. Reliance on the flawed Form 477 data, however, is insufficient to support forbearance for DS0 loops.

Any attempts to add data to the record now with respect to competition for residential customers—as a justification to remove DS0 UNEs—demonstrate that USTelecom’s Petition was not complete as filed. Specifically, the Petition stated that “[i]n the residential marketplace, competition will not be materially affected by forbearance from Section 251(c)(3) because there is effectively *no remaining UNE-based competition* in that marketplace. To the extent CLECs serve residential customers using ILEC facilities, they do so *on commercial platforms*.”¹⁹ The

¹⁸ See Letter from Patrick Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, ¶ 3 (filed May 6, 2019) (“USTelecom May 6 Ex Parte”).

¹⁹ Petition at 27-28 (emphasis added).

Petition cited nothing in support of this claim.²⁰ This assertion was as incorrect then as it is now, as evidenced by USTelecom, AT&T, and Verizon’s attempts to change the approach by suggesting that sufficient competition exists to make these UNEs unnecessary.

Further, USTelecom and the ILECs’ “digital” and “analog” labels²¹ for DS0 UNEs are unhelpful, as they do not track with the Commission’s rules or provide sufficient information to categorize the DS0 loops that CLECs like Sonic purchase and rely on.²² Sonic primarily purchases xDSL-capable DS0 loops so that it can provision its own electronics to enable voice services *and* high-speed broadband over the loop.²³ For residential customers, Sonic deploys xDSL-capable DS0 loops to provide VDSL2 or ADSL2+ and POTS voice.²⁴ For enterprise customers, Sonic deploys its own electronics to enable xDSL and POTS technologies, plus Ethernet over copper, which is delivered using e.SHDSL technology.²⁵

Regardless of the categories, it is not appropriate for the Commission to forbear from the unbundling requirements for xDSL-capable DS0 loops. As Sonic has explained, no substitutes

²⁰ *Id.*

²¹ Verizon Comments at 20; AT&T Comments at 4; USTelecom May 6 Ex Parte at 7-8.

²² In Sonic’s experience, the following DS0 loops are available under Interconnection Agreements (“ICAs”): (1) digital DS0 loops, which come equipped with the ILEC’s electronics, like for Integrated Services Digital Network; (2) analog DS0 loops, which do not come equipped with ILEC electronics, but may have bridge taps and load coils included; and (3) xDSL-capable DS0 loops, which—like analog DS0 loops—do not come equipped with ILEC electronics, but have the bridge taps and load coils removed so that the loop can support xDSL services. These categories track with the categories under the Commission’s rules. *See* 47 C.F.R. § 51.319(a)(1). ILECs are required to condition copper loops upon request to make them capable of providing xDSL services. *See* 47 C.F.R. § 51.319(a)(1)(ii).

²³ Sonic Opposition at 5.

²⁴ *Id.*

²⁵ *Id.*

for bare copper DS0 loops currently exist.²⁶ Access to these xDSL-capable DS0 loops remains necessary to ensure robust competition.²⁷ In some cases, these are the only means of connectivity for consumers.

Further, the ILECs' use of Form 477 data to suggest that sufficient competition exists to forbear from DS0 loops—either nationwide or (in the alternative) where a cable provider provides services within a census block²⁸—fails to paint the full picture of competition. Data showing that cable providers offer services “*in census blocks* that cover almost 90 percent of the U.S. population and 90 percent of U.S. households”²⁹ do not mean—as AT&T later suggests—

²⁶ *Id.* at 9. While AT&T and perhaps other ILECs have suggested that they will offer a commercial alternative in the future if forbearance is granted, they have provided no information about this offering—price, terms, conditions—that would allow the Commission or the parties to analyze it.

²⁷ As Sonic has also previously explained, access to DS1 UNE loops remains necessary for residential and enterprise customers beyond the reach of xDSL-capable loops (*i.e.*, anything greater than 14,500 feet from the central office), as these customers typically have no other option for service. For customers too far from a central office to be served by a DS0 loop, Sonic purchases DS1 loops as an alternative. Sonic Opposition at 3, 15. Sonic serves rural businesses as well as rural residential customers over the DS1 UNE loops it purchases. *Id.* AT&T suggests that Sonic does not use DS1 loops to serve residential customers in rural parts of California, in part because AT&T was unable to find any services on Sonic's website priced at levels that could support a rural DS1-based offering (a rural DS1 UNE is more than \$100), or that offer a 1.5 Mbps residential offering. *See* AT&T Comments at 10 n.20. In fact, Sonic does use DS1s to serve rural residential customers in the instances where residential customers have no other option. Sonic sells these services on a custom basis through its enterprise account team directly to the customer, at a rate of \$149 per month for 1.5 Mbps service, so these options are not listed on its website. Because other service options—if available—would be faster and cheaper, residential customers' purchase of service over these DS1 loops indicates that they are, in fact, purchasing this because it is their only option for broadband. This is the same for rural businesses that purchase 12 Mbps delivered over UNE DS1s; while the price is high, they are doing so because they do not have a better or more cost-effective option. *See* Attachment A at ¶ 6. For rural residential and business customers, DS1s remain invaluable because they enable connectivity for customers beyond the reach of DS0s until a better option becomes available.

²⁸ USTelecom May 6 Ex Parte at 7-8; AT&T Comments at 4.

²⁹ AT&T Comments at 7 (emphasis added).

that cable providers in fact “offer wireline broadband services . . . to almost 90 percent of the U.S. population and 90 percent of U.S. households.”³⁰ As the Commission is well aware, even where Form 477 data suggest the “presence” of a cable broadband service provider in a census block, this does not mean that the provider offers service to every residential location in the census block (or to every location within a wire center comprising many census blocks).³¹

Indeed, USTelecom recently acknowledged that census block reporting is “not granular enough.”³² USTelecom confirmed that “the current use of reporting by census block (CBs) to identify where broadband can be provided has created a one-served-all-served basis for deployment data that has become less reliable as a tool to understand the rural broadband gap or to close it.”³³ The shortfalls USTelecom identifies with this data in the universal service context apply equally in the context of identifying competition.³⁴ Because the Form 477 data are “not granular enough,” they do not support USTelecom’s assertion that competition exists if a cable

³⁰ AT&T Comments at 13.

³¹ *See Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, FCC 17-103, 32 FCC Rcd. 6329, 6340 ¶ 33 (2017) (“[I]f a block was listed by a provider, it is impossible to tell whether residents of that block seeking service could turn to that provider for service or whether the provider would be unable or unwilling to take on additional subscribers. This may limit the value of these data to inform our policymaking and as a tool for consumers and businesses to determine the universe of potential Internet service providers at their location.”).

³² Letter from B. Lynn Follansbee, Vice President, Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-10, CC Docket No. 10-90, at 1 (filed Mar. 21, 2019).

³³ *Id.*

³⁴ Appearing to acknowledge the contradiction inherent in attempting to rely on the Form 477 data for forbearance after it only recently pointed to the flaws in the data, USTelecom tries to distinguish that the Form 477 data are insufficient for determining use of funds “to unserved locations,” but sufficient for determining availability of competition. USTelecom May 6 Ex Parte at 6 n.26. This distinction makes little sense, and USTelecom cannot have it both ways.

provider offers service in a census block.³⁵ USTelecom tries to rely on the small size of cable-served census blocks to conclude that “if a cable operator has deployed facilities in a census block, it is a highly reliable indicator that competitive facilities are generally available or deployable throughout the census block,”³⁶ but there is no indication that this is the case. In reality, competition may be spotty or non-existent, with a provider offering service somewhere in the block but not throughout the census block. In addition, provision of service at maximum download speeds of 25 Mbps in a census block does not mean that all customers within that census block have service at those speeds.

USTelecom relies on a few statements about Form 477 data from the *BDS Order* to suggest that reliance on Form 477 data “is more than adequate for assessing the presence and feasibility of competition for last-mile facilities without reliance on UNEs.”³⁷ In the *BDS Order*, the Commission found the Form 477 data “imply the presence of broadband-capable cable network facilities, which makes it an ideal dataset to ensure the *competitive market test* accounts for competition from cable operators.”³⁸ The analysis referenced in the BDS context says nothing about competition for consumer broadband services in residential areas. First, the test was adopted in the context of enterprise services and customers, who purchase symmetrical, dedicated services at a price point far above Sonic’s \$50/month for voice + broadband.

Assuming for the moment that the presence of a nearby cable network puts competitive pressure

³⁵ See USTelecom May 6 Ex Parte at 8; AT&T Comments at 4; Verizon Comments at 19.

³⁶ USTelecom Ex Parte at 6.

³⁷ See Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (filed May 22, 2019) (“USTelecom May 22 Ex Parte”).

³⁸ *Business Data Services in an Internet Protocol Environment*, Report and Order, FCC 17-43, 33 FCC Rcd. 3459, 3507 ¶ 106 (2017) (emphasis added), *pet. granted in part, denied in part*, *Citizens Telecomm’n’s Co. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018).

on prices for enterprise services, the same is not necessarily true for residential services. A cable operator might be willing to extend its network to serve a lucrative enterprise customer on the other side of the census block, but the economics would almost certainly not support the same decision for a residential customer. Further, the Form 477 data do not provide an accurate view of what those services look like for consumers. Even where there may be a cable provider in a census block where Sonic offers service, for example, Sonic provides a better value than the ILEC and the cable provider. In a comparison of current internet and phone product offerings of Sonic, AT&T, and Comcast in a sample residential location where Sonic offers broadband over AT&T's network via UNE DS0s, Sonic offers unlimited usage, faster speeds and lower prices than AT&T, and a far better value than AT&T or Comcast, which charge prices per Mbps (in their internet and phone packages) that are 1.6x to nearly 25x Sonic's own prices.³⁹ Similarly, in a comparison of internet and phone packages in a sample residential location where Sonic offers broadband over its own fiber, Sonic offers a single package of speeds of up to 1 Gbps that outperforms AT&T and Comcast or offers better value or both: more feature-rich phone service (including protection from unwanted calls at no extra charge), faster speeds in almost all cases, and unlimited usage.⁴⁰ In a comparison of packages where AT&T and Comcast offer similar speed and usage (*i.e.*, 1 Gbps) at a sample location, AT&T charges 2.25x as much as Sonic, and Comcast's 1 Gbps offering costs 1.75x as much as Sonic's but without any included phone service.⁴¹

³⁹ See Attach. C, Tbl. 1.

⁴⁰ See Attach. C, Tbl. 2.

⁴¹ *Id.*

Competition in these areas is working. Sonic—which lacks an incumbent’s advantage in terms of name recognition and prior monopoly sales of telephone or video services—must outperform its competitors both in service and in value. Sonic’s business model is clearly having an impact, as the internet service Sonic provides in San Francisco was ranked as the second fastest internet service in the country in a city-by-city analysis for the second and third quarters of 2018.⁴² Ultimately the consumers benefit from Sonic’s presence, which requires the availability of UNEs like xDSL-capable loops to enter the market and establish a baseline customer base to support its fiber deployment in the area.

IV. REGULATED ACCESS TO DS0 LOOPS AND DARK FIBER TRANSPORT INCREASES FIBER BUILDOUT.

As Sonic has previously explained, Sonic relies on xDSL-capable DS0s and dark fiber transport to offer competitive services to customers and uses these UNEs as a bridge to deploy its own fiber network to offer robust and competitive services.⁴³ Removal of xDSL-capable DS0 and dark fiber interoffice transport UNEs would negatively impact competition and harm the public interest. AT&T has suggested that *removing* regulated access to copper UNEs would increase incentives for fiber buildout,⁴⁴ but this argument misses the point and misrepresents the business model of CLECs like Sonic. Despite the suggestion that CLECs have not used UNEs to deploy fiber infrastructure,⁴⁵ Sonic’s history demonstrates firsthand that regulated access has

⁴² Eric Griffith, *US Fixed Broadband Speeding Up—Especially for Downloads*, PC Mag (Dec. 13, 2018), available at <https://www.pcmag.com/news/365444/us-fixed-broadband-speeding-up-especially-for-downloads>.

⁴³ Sonic Opposition at 4-7.

⁴⁴ Letter from James P. Young, Sidley Austin LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, at 3, 12, WC Docket No. 18-141 (filed Dec. 28, 2018) (“AT&T Dec. 28, 2018 Ex Parte”).

⁴⁵ See Verizon Comments at 13.

incentivized and enabled Sonic's fiber buildout. So far, Sonic has built out fiber that now serves 34 percent of its customers, an increase from serving 12 percent of customers at this time two years ago, and just 1 percent three years ago, as reflected in the attached chart.⁴⁶ As Sonic increases its fiber deployment, it is able to rely less on UNEs to provide service.⁴⁷ Sonic plans to deploy fiber to all of its customers, but this process will take Sonic many years, just as it will for ILECs. This is why it is important to maintain the natural forbearance of existing rules for unbundling as well as for copper retirement: they incentivize both the ILEC and CLEC to race to deploy fiber. Indeed, Sonic's fiber customers are more profitable than its UNE loop customers, providing ample incentive to deploy fiber and transition customers off UNE loops as quickly as possible. Partially as a result of this incentive, Sonic more than doubled the number of census blocks it serves with fiber from December 2016 to December 2018.⁴⁸ Today, Sonic has nearly three times more fiber-served census blocks than in December 2016, and has announced plans to deploy fiber to nearly six times the number of census blocks covered in December 2016.⁴⁹ Sonic is currently deploying gigabit fiber service to 19 new areas.⁵⁰

⁴⁶ See Attach. B, Chart, Sonic Product Mix: ILEC Commercial Resale, CLEC UNE-L and Sonic Fiber.

⁴⁷ *Id.*

⁴⁸ In its Form 477 filings, Sonic reported 1,337 census blocks served with fiber as of December 2016 and 2,865 blocks served with fiber as of December 2017.

⁴⁹ Sonic serves 3,993 census blocks with fiber as of May 24, 2019. Sonic's announced fiber build plans for 2019 and 2020 bring this total to 7,973 census blocks.

⁵⁰ Sophia Kunthara, *Internet provider Sonic adding faster gigabit fiber service for 19 Bay Area neighborhoods*, San Francisco Chronicle (Mar. 7, 2019), <https://www.sfchronicle.com/business/article/Internet-provider-Sonic-adding-faster-gigabit-13668653.php> (describing new deployments in Burlingame, Hillsborough, Redwood City, San Carlos, San Bruno, Millbrae, North Fair Oaks, Belmont, Emerald Hills, San Mateo, Petaluma, Cow Hollow, Pacific Heights, Lower Pacific Heights, Russian Hill, Nob Hill, Chinatown, North Beach, and South San Francisco).

As Sonic has repeatedly explained, UNEs provide a critical mid-step to fiber deployment. Without regulated access to copper loops, Sonic has little to no ability to enter a new area, offer broadband, and ultimately deploy fiber. (Indeed, with the sole exception of Google’s 1,000 home pilot project in Palo Alto, Sonic is unaware of any provider within its service area—certainly not an ILEC or cable operator—that has started with no customers or infrastructure and built fiber to residential users.) As Sonic has explained, Sonic and other CLECs like Sonic use regulated access to UNE loops and dark fiber transport as a basis to develop a business case to enter a new area and build their own fiber. The Brattle Group Analysis confirms that “Sonic has been able to expand its fiber network *because* UNEs were available as a steppingstone.”⁵¹

But as the record demonstrates, there are no commercial substitutes for unbundled DS0 loops, and rarely for interoffice dark fiber transport.⁵² AT&T has suggested that AT&T and ILECs “have committed to continue to offer a UNE-loop product at commercial rates.”⁵³ But without the requirements of Section 251(c) and Section 252, there are no protections in place to ensure that ILECs would, in fact, offer an equivalent bare copper loop or dark fiber transport, much less at competitive prices. (USTelecom suggests that the commercial offering would only be available for “locations that are presently served via UNEs,” which further limits any utility it

⁵¹ Declaration of William P. Zarakas, ¶ 16, Attach. 2 to the Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Brattle Group Analysis” or “Zarakas Declaration”) (emphasis added).

⁵² Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association at 66, WC Docket No. 18-141 (filed Aug. 6, 2018).

⁵³ See AT&T Dec. 28, 2018 Ex Parte at 12. AT&T adds that it plans to price DS0 loops by wire center and to add a surcharge to new loops. It refers to its prices during a “transition” but does not explain what that transition is. See AT&T Feb. 21, 2019 Ex Parte at 1.

would otherwise have.⁵⁴) Regardless, deregulated access will mean higher prices, as CLECs have no alternative to obtaining wholesale loops from the ILEC in residential areas. Even if prices start out at reasonable rates under ILECs' initial "commitments," nothing guarantees that these prices would remain at these rates.

History teaches that once ILECs' prices are no longer regulated, they have no incentive to offer service at reasonable rates. For example, as the Commission acknowledged in a Notice of Apparent Liability against AT&T, after Florida deregulated pricing for telephone services, AT&T "began to dramatically increase its pricing for previously regulated services," resulting in AT&T charging public schools and libraries "some of the *highest prices* in the state over a number of years for basic telephone services" in the context of the E-rate Program.⁵⁵ AT&T was also the subject of a complaint filed with the California Public Utilities Commission claiming that basic service rates were not just and reasonable after AT&T raised them following California's pricing deregulation.⁵⁶ AT&T ultimately settled the complaint, committing to freeze its basic service rates for a set amount of time and to limit the amount by which it would increase its prices for a period of time after that.⁵⁷ Separately, since 2009, AT&T has agreed to limit prices for UNE DS0 loops in California in a settlement agreement with CALTEL, including a

⁵⁴ See USTelecom May 22, 2019 Ex Parte Letter at 1.

⁵⁵ *BellSouth Telecommunications, LLC, d/b/a AT&T Southeast*, Notice of Apparent Liability for Forfeiture, FCC 16-98, ¶¶ 2, 11 (rel. July 27, 2016) (emphasis in original).

⁵⁶ See *The Utility Reform Network v. Pacific Bell Telephone Company d/b/a AT&T California*, Decision Approving Settlement, Case 13-12-005, Decision 15-10-027 (CA P.U.C. Apr. 22, 2016) ("CA PUC Final Decision"); see also *The Utility Reform Network v. Pacific Bell Telephone Company d/b/a AT&T California*, Intervenor Compensation Claim Request of the Utility Reform Network Regarding Basic Service Rates of AT&T California at 12, Case 13-12-005 (CA P.U.C. Dec. 23, 2015).

⁵⁷ CA PUC Final Decision at 5.

2015 agreement to freeze prices through 2020.⁵⁸ The agreements demonstrate a concern that AT&T would raise UNE prices if not otherwise subject to a limiting agreement. Without protections in place, ILECs have no incentive to provide reasonably priced UNE equivalents over time, particularly given that the CLECs to which they are offering services are their competitors.

V. CONCLUSION

Access to DS0 UNE loops, DS1 UNE loops for rural locations (*i.e.*, sites farther from central office locations), and dark fiber interoffice transport UNEs remains necessary to ensure continued availability of competitive services and to spur deployment of fiber infrastructure. Neither the BDS data nor the Form 477 data support forbearance from the unbundling requirements for these UNEs. Accordingly, the Commission should deny USTelecom's Petition.

Respectfully submitted,



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May 28, 2019

⁵⁸ See Reply Comments of the California Association of Competitive Telecommunications Companies, WC Docket No. 18-141 (filed Sept. 5, 2018), citing Attach. 1, AT&T Advice Letter 44894, Amendment for 2016 through 2020 Modified UNE Rates, dated October 1, 2015, at Settlement Agreement ¶ 3.

ATTACHMENT A: DECLARATION OF DANE JASPER

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF DANE JASPER

1. My name is Dane Jasper. I serve as Chief Executive Officer at Sonic Telecom, LLC (“Sonic”). I have been with the company and its parent Sonic.net, LLC for 24 years. My responsibilities include strategic leadership, product design and planning, public relations, and customer service.

2. Sonic purchases dark fiber interoffice transport as UNEs from AT&T connecting 195 wire centers in the San Francisco and Los Angeles areas, 116 of which are of which are classified as “Tier 3.” Sonic uses interoffice dark fiber transport UNEs to connect from larger Tier 1 and Tier 2 wire centers to smaller Tier 3 wire centers. Sonic offers voice and high-speed broadband services out of all wire centers in which it collocates, with the same features and at the same price points regardless of wire center Tier level.

3. Sonic is not aware of competitive dark fiber transport alternatives for the wire centers it currently serves. In Sonic’s experience, cable providers rarely, if ever, are willing to offer Sonic the opportunity to lease dark fiber.

4. Sonic performed an analysis of competitive dark fiber transport providers known to be operating in Sonic’s service territory to determine the feasibility of interconnecting active

Tier 3 wire centers absent interoffice dark fiber transport UNEs. To perform this analysis, Sonic obtained detailed, route-level fiber maps from the top 4 fiber providers we believe offer dark fiber in Sonic's coverage area. Sonic then computed the straight-line distance between the wire center location and the closest competitive fiber route. The average distance between a Sonic Tier 3 wire center and the closest competitive provider's facilities is 30,226 feet, or over 5 miles. Additionally, the facilities available from these competitive providers often lack the route redundancy required to reliably provide life-critical telecommunications services. The required construction footage to connect these wire centers to a competitive fiber route would substantially exceed these figures, as they do not take into consideration the requirement to follow existing rights-of-way such as pole leads or streets.

5. In some areas, there are fiber providers other than AT&T that offer lit transport and backhaul services. With very limited exceptions, there is no available dark fiber transport from any entity other than the ILEC that connects these wire centers together.

6. Sonic typically serves residential and enterprise customers over xDSL-capable UNE loops, but where a customer is located farther than 14,500 feet from a central office, Sonic purchases DS1 loops to serve customers. Sonic sells service over DS1 UNE loops on a custom basis to rural residential and business customers through Sonic's enterprise account team. Sonic provides the 1.5 Mbps service for residential customers at \$149 per month. Sonic offers 12 Mbps service delivered over UNE DS1s for \$1,199 per month. In many cases, these customers purchase service over the DS1 loop because they have no other option for service.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty
of perjury.

/s/ Dane Jasper

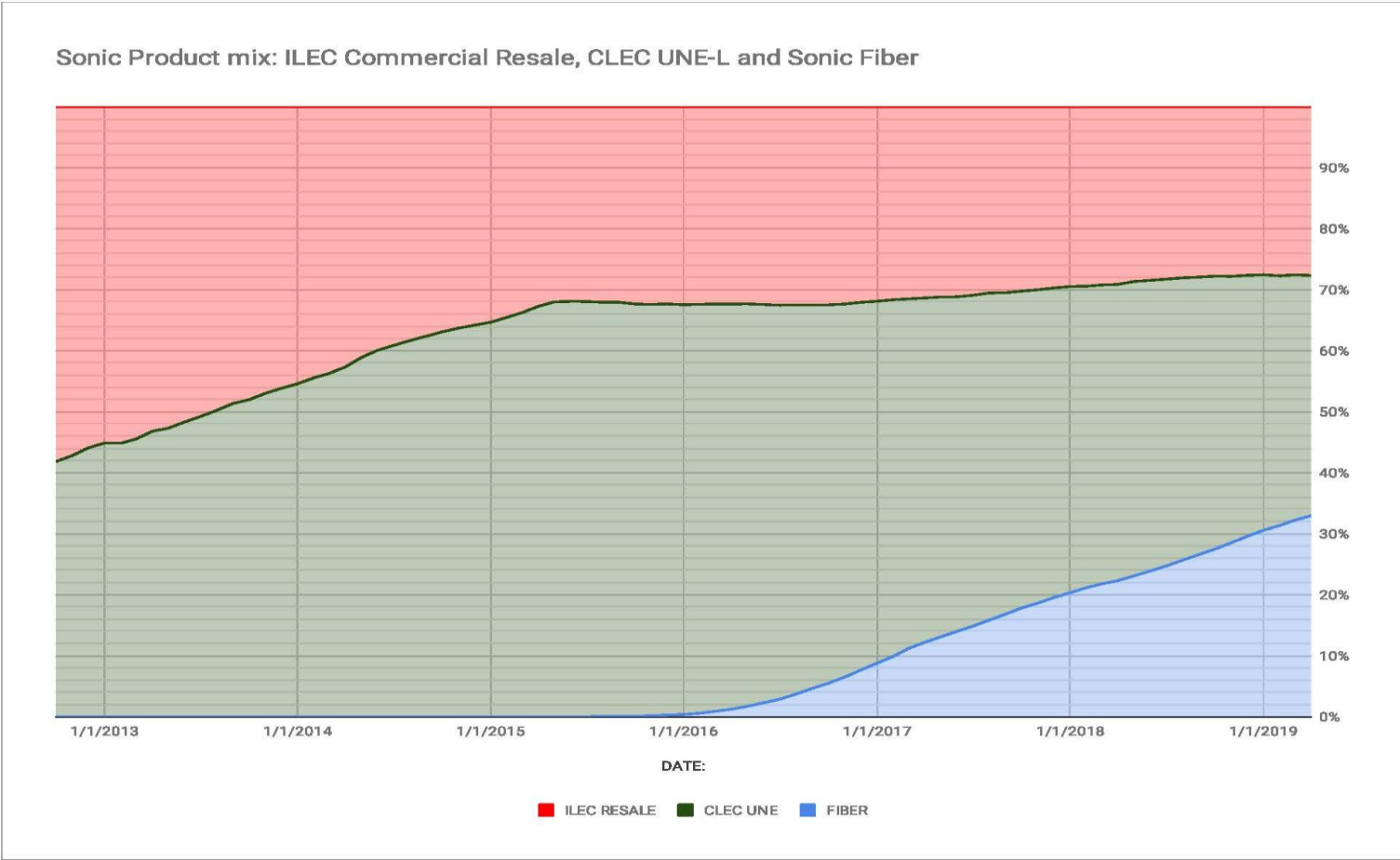
Dane Jasper
Chief Executive Officer
Sonic Telecom, LLC
SONIC TELECOM, LLC
2260 Apollo Way
Santa Rosa, CA 95407

May 28, 2019

Date

ATTACHMENT B:

Chart: Percentage of Sonic Customers Served by ILEC Commercial Resale, CLEC UNE-L and Sonic Fiber



ATTACHMENT C

Table 1:
Internet and Phone Packages¹ for Residential Location² in San Francisco, CA where Sonic Uses UNE DS0s

Provider	Speed ³	Usage	Phone	Monthly Price	Notes
Sonic Package 1	50 Mbps	Unlimited	Unlimited local and long-distance calling; free calling to over 66 countries; free spam robocall blocking	\$30 \$.60/ Mbps	With 1-year contract; increases to \$50/month after 1 year
Sonic Package 2	100 Mbps	Unlimited	Unlimited local and long-distance calling; free calling to over 66 countries; free spam robocall blocking	\$50 \$.50/Mbps	With 1-year contract; increases to \$70/month after 1 year
AT&T Package 1	5 Mbps	1 TB per month	Phone Unlimited North America ⁴	\$62 \$12.40/ Mbps	With 2-year contract for Internet (pricing after 2 years not available on website); phone contract term not specified
AT&T Package 2	75 Mbps	1 TB per month	Phone Unlimited North America	\$72 \$.96/ Mbps	With 2-year contract for Internet (pricing after 2 years not available on website); phone contract term not specified

¹ Data compiled from <https://www.xfinity.com/learn/offers>; <https://www.att.com/shop/u-verse/offers.html>; <https://www.sonic.com/availability> (last accessed May 28, 2019).

² Sample residential address from Ruth Street, San Francisco, CA 94112, used for demonstration purposes.

³ Download speeds up to listed speed.

⁴ Unlimited calling within the U.S. (including Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Marianas) and to Mexico and Canada. See <https://www.att.com/shop/u-verse/offers.html>.

Provider	Speed³	Usage	Phone	Monthly Price	Notes
AT&T Package 3 ⁵	60 Mbps	1 TB per month	None	\$50 \$.83/ Mbps	With 2-year contract for Internet (pricing after 2 years not available on website)
Comcast Package 1	60 Mbps	1 TB per month	Unlimited calling nationwide	\$49.99 \$.83/ Mbps	With 2-year agreement – price is \$59.99/month with no term contract, for first 12 months
Comcast Package 2	60 Mbps	1 TB per month	Unlimited calling nationwide plus nearly half the world	\$59.99 \$1.00/ Mbps	With 2-year agreement – price is \$69.99/month with no term contract, for first 12 months
Comcast Package 3 ⁶	60 Mbps	1 TB per month (may apply)	None	\$29.99 \$.50/Mbps	For the first 12 months with 1-year agreement (not avail. with phone)
Comcast Package 4	400 Mbps	1 TB per month (may apply)	None	\$60 \$.15/ Mbps	For the first 24 months with 1-year agreement (not avail. with phone)
Comcast Package 5	1000 Mbps	1 TB per month (may apply)	None	\$70 \$.07/ Mbps	For the first 24 months with 1-year agreement (not avail. with phone)

⁵ For comparison purposes, Sonic has included AT&T Package 3, which includes Internet only.

⁶ For comparison purposes, Sonic has included Comcast Packages 3-5, which include Internet only.

Table 2:
Internet and Phone Packages for Residential Location⁷ in San Francisco, CA
(where Sonic offers broadband over its own fiber)

Provider	Speed ⁸	Usage	Phone	Monthly Price	Notes
Sonic Package	1000 Mbps	Unlimited	Unlimited local and long-distance calling, and free worldwide calling to over 66 countries; spam robocall blocking	\$40 \$.04/ Mbps	With 1-year contract; increases to \$50/month after 1 year
AT&T Package 1	5 Mbps	1 TB per month	Phone Unlimited North America	\$62 \$12.40/ Mbps	With 2-year contract for Internet (pricing after 2 years not available on website); phone contract term not specified
AT&T Package 2	100 Mbps	1 TB per month	Phone Unlimited North America	\$72 \$.72/ Mbps	With 1-year contract (pricing after 1 year not available on website); phone contract term not specified
AT&T Package 3	300 Mbps	1 TB per month	Phone Unlimited North America	\$72 \$.24/ Mbps	With 1-year contract (pricing after 1 year not available on website); phone contract term not specified
AT&T Package 4	1000 Mbps	Unlimited	Phone Unlimited North America	\$92 \$.09/ Mbps	With 1-year contract (pricing after 1 year not available on website); phone contract term not specified
Comcast Package 1	60 Mbps	1 TB per month	Unlimited calling nationwide	\$49.99 \$.83/ Mbps	With 2-year agreement – price is \$59.99/month with no term contract

⁷ Sample residential address from 31st Ave, San Francisco, CA 94112, used for demonstration purposes.

⁸ Download speeds up to listed speed.

Provider	Speed⁸	Usage	Phone	Monthly Price	Notes
Comcast Package 2	60 Mbps	1 TB per month	Unlimited calling nationwide plus nearly half the world	\$59.99 \$1.00/ Mbps	With 2-year agreement – price is \$69.99/month with no term contract, for first 12 months
Comcast Package 3 ⁹	400 Mbps	1 TB per month (may apply)	None	\$60 \$.15/ Mbps	For the first 24 months with 1-year agreement (not avail. with phone)
Comcast Package 4	1000 Mbps	1 TB per month (may apply)	None	\$70 \$.07/ Mbps	For the first 24 months with 1-year agreement (not avail. with phone)

⁹ For comparison purposes, Sonic has included Comcast Packages 3-4, which include Internet only.